

## **ADMINISTRATIVE PANEL DECISION**

### **Discover Financial Services v. Jhon Guptha, Integrify Solutions Case No. D2023-4494**

#### **1. The Parties**

Complainant is Discover Financial Services, United States of America, represented by Elster & McGrady LLC, United States of America.

Respondent is Jhon Guptha, Integrify Solutions, United States of America.

#### **2. The Domain Name and Registrar**

The disputed domain name <discoverfinancialoptions.com> is registered with GoDaddy.com, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 6, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on December 19, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

Complainant is a credit card issuer and electronic payment services company that also offers personal and student loans, online savings products, certificates of deposit and money market accounts through a bank subsidiary. Complainant, through its predecessor Sears, Roebuck and Co., first began offering financial services under the DISCOVER trademark in 1985. Complainant operates a website at <discover.com> that can also be accessed through <discoverfinancial.com>.

Complainant has registrations for numerous trademarks for or that include “discover” as part of the mark (the “DISCOVER Marks”), including the following:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
DISCOVER	United States of America	36	1479946	March 8, 1988
DISCOVER	United States of America	36	3025822	December 13, 2005
DISCOVER FINANCIAL SERVICES	United States of America	9, 36	6150860	September 15, 2020

The disputed domain name was registered on November 7, 2022. At the time of filing the Complaint, the disputed domain name resolved to a website offering information about credit cards, credit scores, and mortgages, and sought to obtain personal information from users through a subscription service.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name is confusingly similar to the DISCOVER Marks because the DISCOVER Marks are fully incorporated within the disputed domain name and substitution of the element “financial” from one of the DISCOVER Marks for the word “options” in the disputed domain name does not sufficiently differentiate the disputed domain name from the DISCOVER Marks. The similarity between the disputed domain name and the DISCOVER Marks, and Respondent’s use of similar colors, trademarks and background in Respondent’s website, are sufficient to mislead consumers into thinking Respondent’s website is authorized by Complainant.

Complainant contends Respondent lacks rights or a legitimate interest in the disputed domain name, is not making a legitimate noncommercial or fair use of the disputed domain name, and is not commonly known by any of the DISCOVER Marks or variations thereof. Complainant contends that Respondent’s use of the disputed domain name to mislead Internet users is not a *bona fide* or legitimate business and is not a protected noncommercial or fair use of the disputed domain name. Complainant has not granted Respondent any license, permission or authorization to use the DISCOVER Marks in any domain name.

Complainant contends that Respondent would have no reason to register the disputed domain name other than to trade off the reputation and goodwill of the DISCOVER Marks and to disrupt Complainant’s business, which evidences bad faith registration, and that Respondent’s use of the disputed domain name is evidence of bad faith use.

##### B. Respondent

Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant's use of the DISCOVER Marks for almost 40 years, and registration of the same, are more than sufficient to establish that Complainant has trademark rights in the DISCOVER Marks.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of some of the DISCOVER Marks are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the DISCOVER Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the substitution of terms here, substituting "options" for "financial", may bear on assessment of the second and third elements, the Panel finds the substitution of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent's use of the disputed domain name evidences a bad faith attempt to disrupt the business of Complainant and to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the DISCOVER Marks.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that Complainant has established the third element of the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <discoverfinancialoptions.com> be transferred to Complainant.

*/Timothy D. Casey/*

**Timothy D. Casey**

Sole Panelist

Date: January 2, 2024